

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)
_____)

THIS DOCUMENT RELATES TO:)

MDL No. 1456

Master File No. 01-12257-PBS

Subcategory Case No. 06-11337 -PBS

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Abbott Laboratories,)
Inc., Civil Action No. 06-11337-PBS;)

Hon. Patti B. Saris

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Dey, Inc., et al., Civil)
Action No. 05-11084-PBS;)

Magistrate Judge Marianne B. Bowler

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Boehringer Ingelheim)
Corp., et al., Civil Action No. 07-10248-PBS;)

**MAY 2010 STATUS REPORT OF THE UNITED STATES AND THE RELATOR
VEN-A-CARE OF THE FLORIDA KEYS**

The United States of America (“United States”) and Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care” or the “Relator”), Plaintiffs, through their undersigned counsel, respectfully file the attached Status Report for May 2010, in accordance with the Court’s June 17, 2004, Procedural Order.

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc., v. Abbott Laboratories, Inc. MDL Docket Number 06-11337 Original Jurisdiction: U. S. District Court Southern District of Florida		
Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket # 6175, #6177, #6188 and #6189 and Subcategory Docket #233, #235, #243 and #244) Motion in Limine To Exclude Certain Opinions Proffered by Plaintiffs' Expert Mark G. Duggan, Ph.D., Memorandum of Law, Statement of Material Facts and Affidavit by Abbott Laboratories, Inc.</p> <p>(Docket #6600/500) US Memorandum in Opposition</p> <p>(Docket #6633/521) Abbott Reply</p> <p>(Docket #6661/538) US Sur-reply</p> <p>(Docket #6897/684) US Notice of Amendment of Medicare Damages</p> <p>(Docket #6899/686) US Notice of Filing Confidence Intervals</p> <p>(Docket #6925/697) Abbott Response to Confidence Intervals</p>	
2.	<p>(Master Docket #6185, #6186, #6187, #6188, #6189 and #6211 and Subcategory Docket #241, #242, #243, #244 and #262) Abbott Motion for Partial Summary Judgment, Declarations, Memorandum of Law and 56.1 Statement</p> <p>(Master Docket #6302, #6305, #6308, #6312, #6314, #6318, #6319, #6320, #6322, and #6323 and Subcategory Docket #316, #317, #318, #321, #322, #323, #324, #325, #326 and #327) US Cross- Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Abbott's Motion and Response to Abbott's Statement of Facts</p> <p>(Master Docket #6310, #6316, #6317 and #6498 and Subcategory Docket #308, #312, #314 and #447) US Memorandum of Law, 56.1 Statement of Facts, Amended Declaration with Exhibits 1 to 44 Common to All Defendants and Corrected Exhibit 24</p>	

<p>2. (cont'd)</p>	<p>(Master Docket #6415, #6440, #6448, #6455, #6456, #6464 and #6465 and Subcategory Docket #393, #416, #423, #424, #425) Abbott's Reply in Support of its Rule 56.1 Statement, Memorandum of Law in Opposition to US Motion and in Reply to US Opposition to its Motion, Rule 56.1 Statement of Additional Facts, Response to US Rule 56.1 Statement and Declaration with Additional Exhibits 1 to 140</p> <p>(Docket #6771/608) US Sur-Reply in Opposition to Motion to Dismiss</p> <p>(Master Docket #6429, #6438, #6439, #6447, #6449, #6450, #6451, #6452, #6453, #6454 and #6459 and Subcategory Docket #409, #414 and #415)¹ Defendants Dey, Abbott and Roxane Common Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Rule 56.1 Statement of Additional Facts, Declaration with Additional Exhibits 1 to 215 and Declaration with Additional Exhibits 1 to 12</p> <p>(Master Docket #6524, #6526, #6529, #6530 and #6531 and Subcategory Docket #463, #465, #467, #469 and #470) US Reply and Sur-Reply Memoranda, Sur-reply re Abbott's 56.1 Statement, Response to Abbott Additional 56.1 Statement, Reply re US 56.1 Statement and Declaration Submitting Exhibits 1 to 20.</p> <p>(Master Docket #6519, #6523, #6525/6527 and #6528 and Subcategory Docket #459, #462, #466 and #468) US Reply and Sur-Reply Memoranda Common to All Defendants, Reply to Response to Common 56.1 Statement, Response to Defendants' Common Additional 56.1 Statement and Declaration attaching Exhibits 1 to 101</p> <p>(Docket #6900/687) US Notice of Supplemental Authority re <i>United States v. Bater</i>, No. 08-2253, Slip op. (1st Cir. Feb. 4, 2010)</p>	
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¹ Note: The following documents common to all three defendants have **not** been filed in the sub-category case: Master Docket Numbers 6447, 6449, 6450, 6451 6452, 6453, 6454, 6459, 6464, 6465, and 6476.

2. (cont'd)	<p>(Docket #6569/479, #6570/481 and #6571/482) Abbott Sur-Reply, Reply in Support of Additional 56.1 and Declaration with Exhibits A and B</p> <p>(Docket #6629/514) US Opposition re Public Disclosure</p>	
3.	<p>(Docket #6579/487 and #6580/488) US Amended Motion to Quash Out-Of-Time Deposition Notices Served By Abbott Laboratories Or, In the Alternative, For a Protective Order and Memorandum</p> <p>(Docket #6586/493) Abbott Memorandum in Opposition</p>	

	United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc., et al., MDL Docket No. 05-11084-PBS Original Jurisdiction: United States District Court, District of Massachusetts	
Item No.	Pending Motions	Hearing Date
1.	(Master Docket #6170 and Subcategory Docket #230) Joint Motion To Establish a Briefing Schedule for Summary Judgment	
2.	(Master Docket #6178, #6180, #6181, #6182, #6184, #6190, #6194 and #6204 and Subcategory Docket #236, #237, #238, #239, #240, #245, #249 and #264) Motion for Partial Summary Judgment, Affidavits, Declarations, Memorandum of Law and 56.1 Statement by Dey (Master Docket #6295, #6296, #6298, #6301, #6303, #6311 and #6331 and Subcategory Docket #301, #302, #303, #304, #305, #307, #312, #328, #329 and #336) US Cross- Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Motion and Response to Dey's Statement of Facts (Master Docket #6310, #6316, #6317 and #6498 and Subcategory Docket #308, #312, #314 and #447) US Memorandum of Law, 56.1 Statement of Facts, Amended Declaration with Exhibits 1 to 44 Common to All Defendants and Corrected Exhibit 24 (Master Docket #6426, #6428, #6430, #6432 and #6445 and Subcategory Docket #406, #408, #411, #412, and #422) Dey Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Reply in Support of its Rule 56.1 Statement of Facts, and Declaration with Additional Exhibits 297 to 418	

<p>2. (cont'd)</p>	<p>(Master Docket #6429, #6438, #6439, #6447, #6449, #6450, #6451, #6452, #6453, #6454 and #6459 and Subcategory Docket #409, #414 and #415) Defendants Dey, Abbott and Roxane <i>Common</i> Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Rule 56.1 Statement of Additional Facts, Declaration with Additional Exhibits 1 to 215 and Declaration with Additional Exhibits 1 to 12</p> <p>Master Docket #6513, #6520 and Subcategory Docket #453 and #460) US Reply Memorandum, Reply to Dey's Response to Local Rule 56.1 Statement of Undisputed Facts</p> <p>(Docket #6771/608) US Sur-Reply in Opposition to Motion to Dismiss</p> <p>(Master Docket #6524, #6526, #6529, #6530 and #6531 and Subcategory Docket #463, #465, #467, #469 and #470) US Reply and Sur-Reply Memoranda, Sur-reply re Abbott's 56.1 Statement, Response to Abbott Additional 56.1 Statement, Reply re US 56.1 Statement and Declaration Submitting Exhibits 1 to 20.</p> <p>(Master Docket #6519, #6523, #6525/6527 and #6528 and Subcategory Docket #459, #462, #466 and #468) US Reply and Sur-Reply Memoranda <i>Common</i> to All Defendants, Reply to Response to <i>Common</i> 56.1 Statement, Response to Defendants' <i>Common</i> Additional 56.1 Statement and Declaration attaching Exhibits 1 to 101</p> <p>(Master Docket #6566, #6567 and #6568 and Subcategory Docket #477, #478 and #480) Joint Sur-Reply by Defendants, Declaration with Exhibits A-D and Combined Reply to US Response to Defendants' Combined 56.1</p> <p>(Docket #6618/512) Dey Response to October 20, 2009 Request of the Court</p> <p>(Docket #6629/514) US Opposition re Public Disclosure</p> <p>(Docket #6900/687) US Notice of Supplemental Authority re <i>United States v. Bater</i>, No. 08-2253, Slip op. (1st Cir. Feb. 4, 2010)</p>	
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3.	<p>(Docket #6584/491 and #6585/492) US Motion to Consolidate Cases for Trial and Memorandum</p> <p>(Docket #6606/504) Dey and Roxane Consent Motion to Establish Briefing Schedule and Hearing Date</p> <p>(Docket #6629/518) Roxane Opposition to Motion to Consolidate, with Exhibits A – D</p> <p>(Docket #6635/524) Dey Opposition to Motion to Consolidate, Exhibits A – E</p> <p>(Docket #6660/537) US Reply in Support of Motion to Consolidate, with Exhibits 1 - 2</p> <p>(Docket #6767/604) Dey Sur-Reply in Opposition to Motion to Consolidate</p>	1/19/2010 at 2:00 PM
4.	<p>(Docket #6913/692 and #6914/693) US Motion and Memorandum to Exclude Certain Testimony of W. David Bradford, Ph.D.</p> <p>(Docket #695) Joint Dey and US Notice Concerning Dey's Response</p> <p>(Docket #6985/728, #6986/729 and #6987/730) Dey Opposition and Supporting Declarations</p> <p>(Docket #752/7055) US Motion for Leave to File Reply Memorandum</p>	
5.	<p>(Docket #6943/704 and #6944/705) US Motion for Order to Expedite Order Permitting Use of Depositions of Witnesses More Than 100 Miles from the Courthouse and for Leave to Subpoena Witnesses</p> <p>(Docket #710/6958) Opposition by Roxane</p> <p>(Docket #711/6960 and #712/6961) Opposition by Dey and Declaration</p>	
6.	<p>(Docket #6968/713, #6971/714 and #6972/715) Dey Motion in Limine to Exclude from Evidence the Reports and Testimony of Theodore R. Marmor, Ph.D., Memorandum and Declaration</p> <p>(Docket #753/7057) Opposition by US</p>	

7.	<p>(Docket #6991/731, #6992/732 and #6993/733) Dey Motion in Limine to Exclude the Opinions of Mark Duggan, Ph.D. , Memorandum and Declaration</p> <p>(Docket #7073/757) Opposition by United States</p>	
8.	<p>(Docket #6996/735 and #6997/736) US Expedited Motion to Strike Witness List, Exhibit List, for Failure to Comply with Rule 26 (A)(3)(A), FRCP, and Memorandum</p> <p>(Docket #751/7052) Opposition by Dey</p> <p>(Docket #754/7068) US Motion for Leave to File Reply Memorandum</p>	
9.	<p>(Docket #6998/737, #6999/738 and #7006/744) Dey Motion in Limine to Exclude from Evidence the Reports and Testimony of Stephen W. Schondelmeyer, Memorandum and Declaration</p> <p>(Docket #7074/758) Opposition by United States</p>	
10.	<p>(Docket #7046/749 and #7047/750) United States Motion to Bifurcate Medicare and Medicaid Claims and Memorandum</p> <p>(Docket #7078/762) Opposition by Dey</p> <p>(Docket #7084/763) US Motion for Leave to File Reply Memorandum in Support of Motion to Bifurcate</p>	
11.	<p>(Docket #7070/755 and #756/7071) Motion to Compel the United States to File Revised Exhibit and Witness Lists by Dey and Memorandum</p> <p>(Docket #7075/759) Opposition by United States</p>	
12.	<p>(Docket #7076/760) Memorandum of United States Regarding Alternative Trial Scenarios</p> <p>(Docket #7077/761) Notice by Dey Proposed Trial Plan</p>	
13.	<p>FURTHER STATUS CONFERENCE SET FOR 5/3/2010 AT 3:30 PM IN COURTROOM 19 BEFORE JUDGE PATTI B. SARIS</p>	

	United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp., et al., MDL Docket No. 07-10248-PBS Original Jurisdiction: United States District Court, District of Massachusetts	
Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket #6191, #6192, #6193, #6214 and #6215 and Subcategory Docket #246, #247, #248 and #263) Motion for Summary Judgment, Memorandum, Declaration and 56.1 Statement by Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc.</p> <p>(Master Docket #6410, #6411, #6412 and #6413 and Subcategory Docket #390, #391, #394 and #397) US Memorandum in Opposition, Response to Statement of Facts and Affidavit in Support with Exhibits</p> <p>(Master Docket #6516, #6517 and #6522 and Subcategory Docket #456, #457 and #464) Reply Memorandum, Reply to the US Response to Boehringer Statement of Material Facts and Declaration Submitting Exhibits 89 to 130</p> <p>(Docket#6575/483) US Sur-Reply Memorandum</p> <p>(Docket #6629/514) US Opposition re Public Disclosure</p> <p>(Docket #6771/608) US Sur-Reply</p>	1/19/2010 at 2:00 PM

2.	<p>(Master Docket #6199, #6200, #6201, #6202 and #6207 and Subcategory Docket #256, #257, #258, #260 and #261) Motion for Summary Judgment by Roxane Laboratories</p> <p>(Master Docket #6290, #6291, #6293, #6294, #6306, #6307, #6309, #6313, #6315, #6327 and #6334 and Subcategory Docket #297, #298, #299, #300, #309, #310, #311, #313, #315, #332 and #338) US Cross-Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Roxane's Motion and Response to Roxane's Statement of Facts</p> <p>(Master Docket #6310, #6316, #6317 and #6498 and Subcategory Docket #308, #312, #314 and #447) US Memorandum of Law, 56.1 Statement of Facts, Amended Declaration with Exhibits 1 to 44 Common to All Defendants and Corrected Exhibit 24</p> <p>(Master Docket #6424, #6425, #6427, and #6431 and Subcategory Docket #404, #405, #407, and #410) Roxane Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Reply in Support of its Rule 56.1 Statement of Facts, and Declaration with Additional Exhibits 220 to 335)</p> <p>Master Docket #6429, #6438, #6439, #6447, #6449, (Master Docket #6514, #6515, #6518 and #6521 and Subcategory Docket #454, #455, #458 and #461) Reply and Surreply Memorandum, Cross Statement of Material Facts L.R. 56.1 re 297 Motion for Summary Judgment in Response to Additional Statement of Facts in Support of Roxane Defendants' Motion for Partial Summary Judgment (MD 6425 - ##298-318), Statement of Material Facts L.R. 56.1 re 297 MOTION for Summary Judgment in Reply to Roxane Defendants' Response to the L.R. 56.1 Statement of Material Facts and Supplemental Affidavit submitting Exhibits 182 to 190</p> <p>(Master Docket #6524, #6526, #6529, #6530 and #6531 and Subcategory Docket #463, #465, #467, #469 and #470) US Reply and Sur-Reply Memoranda, Sur-reply re Abbott's 56.1 Statement, Response to Abbott Additional 56.1 Statement, Reply re US 56.1 Statement and Declaration Submitting Exhibits 1 to 20.</p>	
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2. (cont'd)	<p>(Master Docket #6519, #6523, #6525/6527 and #6528 and Subcategory Docket #459, #462, #466 and #468) US Reply and Sur-Reply Memoranda Common to All Defendants, Reply to Response to Common 56.1 Statement, Response to Defendants' Combined Additional 56.1 Statement and Declaration attaching Exhibits 1 to 101</p> <p>(Docket#6617/511) Roxane Defendants' Unopposed Motion for Leave to File A Supplemental Local Rule 56.1 Statement of Material Facts</p> <p>(Docket #6674/540 and #6675/541) U.S. Response to Supplemental 56.1 and Declaration</p>	
3.	<p>(Docket #6583/490) Ven-A-Care Consent Motion to Modify Briefing Schedule and Consolidate Opposition to Defendants' Motions to Dismiss into One Memorandum of Law</p>	
4.	<p>(Docket #6584/491 and #6585/492) US Motion to Consolidate Cases for Trial and Memorandum</p> <p>(Docket #6606/504) Dey and Roxane Consent Motion to Establish Briefing Schedule and Hearing Date</p> <p>(Docket #6629/518) Roxane Opposition to Motion to Consolidate, with Exhibits A – D</p> <p>(Docket #6635/524) Dey Opposition to Motion to Consolidate, Exhibits A – E</p> <p>(Docket #6660/537) US Reply in Support of Motion to Consolidate, with Exhibits 1 - 2</p> <p>(Docket #6768/605) Roxane Sur-Reply in Opposition to Motion to Consolidate</p>	
5.	<p>(Docket #6930/699 and #6931/700) Boehringer Motion to Bifurcate the Corporate Veil-Piercing Issues for Trial and Memorandum</p> <p>(Docket #6946/706) US Opposition</p>	

6.	<p>(Docket #6943/704 and #6944/705) US Motion for Order to Expedite Order Permitting Use of Depositions of Witnesses More Than 100 Miles from the Courthouse and for Leave to Subpoena Witnesses and Memorandum</p> <p>(Docket #710/6958) Opposition by Roxane</p> <p>(Docket #711/6960 and #712/6961) Opposition by Dey and Declaration</p>	
7.	(Docket #6952/708) Roxane Assented to Motion for Briefing Schedule	
8.	(Docket #6953/709) Joint Motion to Amend Scheduling Order by US	
9.	(Docket #6969/716 and #6970/717) Roxane Motion in Limine to Exclude Certain Evidence and Argument Related to Plaintiffs' Damages Claims and Memorandum	
10.	(Docket #6974/718 and #6975/719) Roxane Motion in Limine to Exclude Certain Expert Opinions Proffered by Plaintiffs' Expert Mark G. Duggan and Memorandum	
11.	(Docket #6968/721) Roxane Motion for Joinder in the Dey Defendants' Motion In Limine to Exclude from Evidence the Reports and Testimony of Theodore R. Marmor, Ph.D.	
12.	FURTHER STATUS CONFERENCE SET FOR 5/3/2010 AT 3:30 PM IN COURTROOM 19 BEFORE JUDGE PATTI B. SARIS	

Respectfully Submitted,

For the United States of America,

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May 3, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above "**May 2010 Status Report of the United States and the Relator Ven-a-Care of the Florida Keys**" to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Mark Lavine

Dated: May 3, 2010